

NTSB Order No. EA-4896

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 17th day of May, 2001

Respondent .

Docket SE-16003

The respondent has appealed from the oral initial decision Administrative Law Judge Patrick G. Geraghty issued in this emergency proceeding on September 27, 2000, at the conclusion of an evidentiary hearing.<sup>1</sup> By that decision, the law judge affirmed an emergency order of the Administrator that revoked respondent's airline transport pilot certificate for his alleged

7352

violations of sections 91.7 and 91.13(a) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Part 91).<sup>2</sup> For the reasons that follow, the appeal is denied.<sup>3</sup>

The Administrator's June 28, 2000 Emergency Order of Revocation alleges the following facts and circumstances concerning the respondent:

1. You are now, and at all times mentioned herein were, the holder of Airline Transport Pilot Certificate No. 001672555.
2. On or about March 25, 2000, you acted as pilot in command of civil aircraft N614AS, a Boeing Model 737-700, operated as Alaska Airlines' Flight 506 from Portland, Oregon to San Jose, California.
3. Incident to that flight, and shortly after the aircraft had climbed to approximately 14,000 feet, the oxygen masks in the passenger compartment deployed.
4. The passengers used the oxygen masks, depleting the emergency oxygen supply in the main cabin.
5. Following that incident, you descended the aircraft to 10,000 feet and checked the pressurization system to determine the cause of the deployment of the oxygen masks.
6. You then climbed the aircraft to flight level 410 and continued the flight to San Jose.
7. You operated the aircraft at flight level 410 when there was insufficient emergency oxygen for the passengers in the event of a loss of cabin pressurization.

---

<sup>2</sup>FAR sections 91.7 and 91.13(a) provide as follows:

**§ 91.7 Civil aircraft airworthiness.**

(a) No person may operate a civil aircraft unless it is in an airworthy condition.

**§ 91.13(a) Careless or reckless operations.**

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

<sup>3</sup>The Administrator has filed a reply opposing the appeal.

The law judge concluded that these allegations were established by the Administrator's evidence and found that they supported the charged violations. We agree.

On appeal, respondent contends that the law judge's conclusion that the charge of recklessness was proved rests on clearly erroneous credibility findings. We find no support for such a contention in the respondent's brief. Specifically, we do not agree that the minor differences in the testimony of the flight attendants as to their actions and communications with the flight crew after the oxygen masks deployed in the cabin render their testimony unreliable.<sup>4</sup> The law judge was fully aware of these essentially inconsequential differences, which he discounted given the stress of the situation with which they had to deal,<sup>5</sup> and his credibility assessments reflect a careful and comprehensive understanding of the testimony of all of the witnesses and a thoughtful appreciation of the interests that

---

<sup>4</sup>The law judge did not abuse his discretion by limiting respondent's cross examination of the flight attendants about their knowledge of "rumors" that may have been critical of their performance on the subject flight or about a tape recording one of them had made of a company debriefing that was no longer available, although a summary of the debriefing had been given to respondent. Since the law judge was adequately apprised of respondent's position that these matters might bear on the question of the flight attendants' credibility, we do not think it was necessary, if indeed it would have been appropriate, to develop the record further on these issues.

<sup>5</sup>The law judge, for example, noted that in light of the attendants' early uncertainty as to the seriousness of the pressurization problem, "it [was] understandable that not everybody [would] remember everything in exactly the same sequence. So I attached no significance to the fact that the three witnesses did not testify in rote." I.D. at 285.

might be expected to have influenced their accounts and recollections of the flight.<sup>6</sup> In short, his decision to credit the testimony of the flight attendants over the flight crew's is fully justified on the record the law judge so voluminously recounts, and the credited testimony leaves no doubt that the respondent knew when he decided to continue the flight to San Jose that his passengers had already used their emergency oxygen.<sup>7</sup>

Respondent's next argument borders on the frivolous. Although acknowledging that an aircraft must both conform to its supplemental type certificate *and* be in a condition for safe flight in order to be considered airworthy, he argues that the Administrator failed to establish that the aircraft was not airworthy because she did not submit proof of the Boeing 737's supplemental type certificate. However, since respondent did not dispute, or put on evidence to contradict, the showing that an aircraft operated at flight level 410 without emergency oxygen could not be considered in safe condition, in light of the grave

---

<sup>6</sup>That a statement prepared by the flight attendants shortly after the flight contained less detail than their testimony at the hearing does not provide a valid basis for disturbing the law judge's judgments on credibility. Respondent had a full opportunity to cross examine the attendants about the statement, required by their employer, and the law judge found no basis in their responses for not finding them truthful witnesses in their testimony before him.

<sup>7</sup>Moreover, the initial decision recognizes that even if a flight attendant had not told the respondent that the passengers had used the oxygen masks, he should have known that at least some, if not all, of the passengers would have used them because of the briefing they received at the outset of the flight.

health risks that would have been posed in the event of a depressurization, the Administrator did not need to tender evidence as to the requirements of the aircraft's type certificate. At the same time, nevertheless, we note that an FAA safety inspector testifying for the Administrator, and who serves as the Boeing 737 air crew program manager for Alaska Airlines, gave his opinion that the aircraft would no longer conform to its type design if operated at 41,000 feet after supplemental oxygen had been used up. Respondent did not offer evidence to rebut this testimony. We think on this record there was sufficient proof that the aircraft was not airworthy when respondent returned it to flight level 410.

Last, respondent asserts that assuming, *arguendo*, he committed the violations alleged by the Administrator, his conduct was not egregious enough to warrant the sanction of revocation.<sup>8</sup> To begin with, even if we agreed with the respondent, and we do not, his opinion in this regard would not provide justification for the Board not to defer to the Administrator's choice of sanction, which he has not shown to be arbitrary, capricious, or contrary to law. More to the point, we fully endorse the Administrator's judgment that respondent's conduct reflected that he lacks the care, judgment, and

---

<sup>8</sup>We find no merit in respondent's suggestion that the Administrator's judgment on sanction is somehow circumscribed by an investigating inspector's recommendation on the issue. The Board owes deference only to the Administrator's sanction decisions, not to those on her staff who may or may not be aware of all of the policy considerations that should be evaluated in reaching such determinations.

responsibility expected of the holder of an airline transport pilot certificate. Respondent knowingly and unnecessarily exposed eighty-eight passengers and three cabin crewmembers to the significant likelihood of sudden, serious brain injury or death in the event the aircraft experienced another pressurization problem. We cannot say that the Administrator was mistaken in concluding that this was not the decision of an individual who can be invariably expected to discharge properly the responsibility of safeguarding the lives of those he has been entrusted to deliver safely.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The respondent's appeal is denied; and
2. The initial decision and the emergency order of revocation are affirmed.

CARMODY, Acting Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.